IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2818 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

RAMESHBHAI @ GOVINDBHAI CHIMANBHAI PATNI (VAGHRI)

Versus

COMMISSIONER OF POLICE

Appearance:

MR VIJAY H PATEL for Petitioner

MR SJ DAVE, APP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 28/06/2000

ORAL JUDGEMENT

By means of filing this petition, the petitioner has challenged the order of detention dated 3-1-2000 passed by the Police Commissioner, Ahmedabad City.

2. It is a settled principle of law that in order to bring a person within the expression "dangerous person"

as defined in clause (c) of section 2 of the Gujarat Prevention of Anti-Social Activities Act, 1985 (for short `the Act of 1985'), there should be positive materials to indicate that such person is habitual of committing or attempting to commit or abetting the commission of offences which are punishable under Chapter XVI or XVII of Chapter V of the Arms Act and that single or isolated act falling under the said Chapters cannot be characterised as a habitual acts as envisaged in section 2(c) of the PASA Act. Further, besides a person being a dangerous person, his activities should also fall within the ambit of expression `public order'. A distinction has to be drawn between the `law and order' and `maintenance of public order'. A reference may be made of M.J.Shaikh V. M.M. Mehta, Commissioner of Police & Ors., reported in 1995 (2) GLR 1268.

3. I have heard learned advocate for the petitioner at length and also perused the material on record. Learned advocate for the petitioner has mainly argued that representation of the petitioner has been handed over by his wife personally to the authority, i.e. Home Minister on 4-1-2000. Whereas, learned Addl. Govt. Pleader, Mr.S.J.Dave, on instructions stated that representation of the petitioner has been received by the State authority on 31-1-2000.

4. In view of the above, yesterday this Court has directed the State to get the Inward Register. Today, State has supplied xerox copies of the relevant pages of Inward Register, same are ordered to be taken on record. It reflects from the said xerox copies that the representation, which has been handed over by the wife of the petitioner, has been noted at Sr.No.841 in the said register and in the column of date of receipt, it has been specifically stated that "31-1-2000; party in person". If representation has been received by the authority on 31-1-2000, then certainly it should not have been noted at Sr.No.841. So, there is some discrepancy in the serial number noted by the concerned authority and therefore, I am ready to accept the argument advanced on behalf of learned advocate for the petitioner that the representation has been handed over by the wife of the petitioner on 4-1-2000 and same has been decided on 2-2-2000 and no affidavit has been filed to that effect. Hence, there is a delay of almost one month in deciding the representation which has not been satisfactorily explained by filing the affidavit. It has been held in a case of Rajammal Vs. State of Tamil Nadu and another reported in AIR 1999 S.C. page 684 more particularly at head note which states as under:

"Detention-Unexplained delay of five days in considering and disposing detenu's representation-Mere absence of Minister at Headquarters not sufficient to justify delay-Detention vitiated."

The Apex Court quoted in the above referred judgment certain portion of a judgment delivered by a Constitutional Bench in K.M.Abdulla Kunhi and B.L.Abdul Khader V. Union of India, which reads thus:

"It is a constitutional mandate commanding the concerned authority to whom the detenu submits his representation to consider the representation and dispose of the same as expeditiously as possible. The words "as soon as may be" occurring in clause (5) of Article 22 reflects the concern of the Framers that the representation should be expeditiously considered and disposed of with a sense of urgency without an avoidable delay. However, there can be no hard and fast rule in this regard. It depends upon the facts and circumstances of each case. There is no period prescribed either under the Constitution or under the concerned detention law, within which the representation should be dealt with. The requirement however, is that there should not be supine indifference, slackness or callous attitude in considering the representation. Any unexplained delay in the disposal of representation would be a breach of the constitutional imperative and it would render the continued detention impermissible and illegal".

It has been further held by the Apex Court in para 9 as

under:

"The position, therefore, now is that if delay was caused on account of any indifference or lapse in considering the representation such delay will adversely affect further detention of the prisoner. In other words, it is for the authority concerned to explain the delay, if any, in disposing the representation.It is not enough to say that the delay was very short. Even longer delay can as well be explained. so the

test is not the duration or range of delay, but how it is explained by the authority concerned."

5. In the matter before the Supreme Court in Rajammal (supra), it appeared that there was a delay of five days. For that also, explanation has been putforward by the authority that Minister was on tour for a period of two days. Still, Apex Court has stated that delay of five days is a delay. Whereas in the present case, representation has been handed over by his wife to the Home Minister on 4-1-2000 and it has been decided on 2-2-2000 and hence, there is a delay of approximately one month in considering the representation. It is to be noted that in this case no satisfactory explanation has been put forward by the respondents. Therefore, case of the present petitioner is on a much better footing to that of the case before the Supreme Court. As the representation of the petitioner has not been decided by the authority, the rights guaranteed under Article 22(5) of the Constitution of India are violated which make the order of detention illegal.

6. In view of the above, the petition is allowed. The order of detention dated 3-1-2000 passed against the petitioner-detenu is hereby quashed and set aside. The detenu-Rameshbhai @ Govindbhai Chimanbhai Patni is ordered to be set at liberty forthwith, if not required to be detained in any other case. Rule is made absolute accordingly with no order as to costs.

(R.P.DHOLAKIA,J.)

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